A depositor may recover substantial damages from a bank improperly dishonoring his check, if he is a merchant. Some courts recognize no distinction where the depositor is not a trader, but the general rule is that the ordinary depositor may recover nominal damages only, unless special damage is proved. *Third Nat. Bank v. Ober* (1910, C. C. A. 8th) 178 Fed. 678; *Grenada Bank v. Lester* (1921, Miss.) 89 So. 2. The court in the instant case extended the rule providing for the recovery of substantial damages to a depositor who was merely a fiduciary. The case would probably not be followed by these courts which allow only merchant depositors to recover substantial damages, since the injury did not affect the plaintiff's credit in his own business. For a discussion of the subject, see (1920) 30 YALE LAW JOURNAL, 194.

INSURANCE—MUTUAL BENEFIT SOCIETIES—BY-LAW ABOLISHING PRESUMPTION OF DEATH.—The defendant, a mutual benefit society, expressly reserved in its contract of insurance the privilege to bind members by subsequently enacted by-laws. This was also allowed by statute. Colo. Sess. Laws, 1911, ch. 139, sec. 8. After issuance of the certificate in suit, but before the insured's disappearance, the society enacted a by-law to the effect that absence without communication should never entitle a beneficiary to recover on the certificate, until the full term of the member's expectancy had expired, and provided that up to such expiration premiums had been duly paid. *Held,* that the plaintiff should recover, as the by-law was unreasonable, even though the certificate provided that the member should be bound by all future changes in the by-laws, and notwithstanding the statute. *Modern Woodmen of American v. White* (1921, Colo.) 199 Pac. 965.

How far mutual benefit societies may affect the rights of members by amending their by-laws, even when the privilege to amend is expressly reserved, is uncertain. See (1912) 26 HARV. L. REV. 180; COMMENTS (1915) 24 YALE LAW JOURNAL, 337. But it is generally held that amendments which are unreasonable are not binding. COMMENTS (1917) 26 YALE LAW JOURNAL, 239. By the weight of authority the amendment in the instant case is not binding because unreasonable. *Fryer v. Modern Woodmen of America* (1920, Iowa) 179 N. W. 160; *Hannon v. Grand Lodge* (1917) 99 Kan. 734, 163 Pac. 169; see L. R. A. 1917 C, 1032, note; *contra, Steen v. Modern Woodmen of America* (1921) 296 Ill. 104, 129 N. E. 546. For a discussion, see (1921) 30 YALE LAW JOURNAL, 300.

JURISDICTION—SERVICE OF PROCESS ON CORPORATION'S LOCAL MANAGING AGENT—ADVERTISEMENTS AS EVIDENCE OF AGENCY.—The plaintiff, engaged in business in New York, entered into a contract in Chicago with the defendant, an Illinois corporation. Difficulties arose and the plaintiff caused a summons to be served upon one Besser, as the defendant's New York managing agent. It appeared, however, that Besser was merely a broker, selling goods on commission for many concerns. But the defendant had frequently advertised that it maintained a New York office with Besser in charge. *Held,* that the advertisements justified the conclusion that Besser was, in fact, a managing agent. *Dreher v. Western Doll Mfg. Co.* (1921) 198 App. Div. 21, 189 N. Y. Supp. 422.

Section 229 of the New York Civil Practice Act authorizes service of summons upon the managing agent of a foreign corporation. In the instant case, all orders were accepted and accounts settled in Chicago, so it seems impossible to consider the defendant as "doing business" in New York to such an extent as to render it subject to that state's jurisdiction. See (1921) 31 YALE LAW JOURNAL, 205. The mere fact that the defendant sold goods in New York did not constitute "doing business" there. *Day v. Schiff-Lang* (1921, D. C. S. D. N. Y.) 66 N. Y. L. JOUR. 611 (Nov. 21, 1921). But the decision may be supported on the ground that the

defendant, having induced people to trade with it on the representation that it maintained a New York office, is estopped from denying that fact for the purpose of avoiding a summons.

PERSONS—LIABILITY OF HUSBAND FOR WIFE'S CRIME.—The defendant's wife, with his knowledge, distilled and sold whiskey in their home. They were jointly charged with a violation of the liquor laws. Mich. Pub. Acts, 1917, Act 338, sec. 2, as amended by Pub. Acts, 1919, Act 53. The wife pleaded guilty. *Held,* that the defendant was guilty. *People v. Sybisloo* (1921, Mich.) 184 N. W. 410.

At common law the wife, in committing a crime in the presence of her husband, was presumed to do so under his coercion. *Cothron v. State* (1921, Md.) 113 Atl. 620. Because of the increased personal freedom of the wife, this presumption has been greatly weakened and in some cases destroyed. *King v. City of Owensboro* (1920) 187 Ky. 21, 218 S. W. 297, commented on (1920) 29 YALE LAW JOURNAL, 802. The instant case, however, does not rest on the presumption of coercion. The crime, being *malum prohibitum,* did not require the specific intent of the husband, and his liability was based on his position as head of the house, with authority to control its management. This appears to be the general rule as to criminal acts not *malum in se* committed by the wife in the home. Schouler, *Domestic Relations* (5th ed. 1895) ch. 2, sec. 50.

PROPERTY—ESTOPPEL—ACQUIESCENCE IN BUILDING OPERATIONS ON OWNER'S LAND.—The defendant erected a tenement house which, due to a mistake in the location of the division line, partly encroached upon the adjoining land of the plaintiff's intestate. The latter was repeatedly on the premises during the construction, but was unaware of the fact that the building was partly on his land. After the erection of the building the defendant enclosed more of the land with a fence, in the location of which the intestate acquiesced. The defendant at all times had access to the recorded deeds showing the boundary lines. *Held,* that the plaintiff should not be estopped from asserting his title to the land. *Monterosso v. Kent* (1921, Conn.) 113 Atl. 922.

In an estoppel with respect to the title to real property, an intent to deceive is required, or such gross negligence as would evidence such intent. *Battle v. Claiborne* (1915) 133 Tenn. 286, 180 S. W. 584; Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 807. It is the general rule that the doctrine of equitable estoppel cannot be applied when both parties know, or have the same means of ascertaining, the facts. *Powers v. Trustees of Grammar School* (1919) 93 Vt. 220, 106 Atl. 836; *Fellows v. National Can Co.* (1919, C. C. A. 6th) 257 Fed. 970; Pomeroy, *op. cit.* sec. 810.

WILLS—EFFECT OF CONVICTION OF DEVISEE FOR MURDER OF CO-DEVISEE.—A testator devised property to his wife and son equally and provided that if the wife predeceased the son, the entire property should go to the son. The latter was convicted of her murder and committed suicide. His widow brought an action to quiet title to the property. A statute provided that no person feloniously taking the life of another should inherit from such person or take anything by devise or legacy. Iowa Code Supp. 1913, sec. 3386. *Held,* that the murderer's widow should succeed to the entire estate. *In re Emerson's Estate* (1921, Iowa) 183 N. W. 327.

The decision is a strict interpretation of the statute. The devisor himself must have been murdered; the killing of one whose death merely enlarged the estate does not cause forfeiture. For a discussion of the general subject, see (1918) 27 YALE LAW JOURNAL, 964; (1919) 28 *ibid.* 514.